

**DECISION**

**THE COMPTROLLER GENERAL  
OF THE UNITED STATES**  
WASHINGTON, D.C. 20548

**FILE:** B-222727

**DATE:** April 24, 1986

**MATTER OF:** Fred Erlandson Contracting

**DIGEST:**

Protest is dismissed where untimely filed and both issues raised--alleged below-cost bid and failure to comply with contract requirements--are for determination by the contracting agency and are not for review by our Office absent circumstances not present here.

Fred Erlandson Contracting protests the award of a contract to furnish and install parachute hoists to Fire Rescue and Equipment, Inc. (FRE), under solicitation No. FO561185R0031 issued by the Air Force. Erlandson asserts that FRE submitted a below-cost bid and that the contract was subsequently modified to permit performance delays and price increases.

We dismiss the protest under 4 C.F.R. § 21.3(f) (1985).

The contract was awarded in April of 1985, but Erlandson did not file its protest until April 4, 1986. Erlandson states that no protest was made at the time of award, although FRE had submitted a below-cost bid, because Erlandson was not the next low bidder, but was third low. However, Erlandson believes it is now entitled to protest because the contract modifications have accentuated the prejudice to itself and other bidders resulting from the improper award. Accordingly, Erlandson believes that our Office should consider the protest under the significant issue exception to our timeliness rules. 4 C.F.R. § 21.2(c). We do not agree.

In order to prevent the timeliness requirements from becoming meaningless, the significant issue exception is strictly construed and seldom used. This exception is limited to considering untimely protests that raise issues of widespread interest to the procurement community and


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which have not been considered on the merits in a previous decision. Emerson Electric Co.--Reconsideration, B-220517.2, Nov. 26, 1985, 85-2 C.P.D. ¶ 607. Here, the issue of an alleged below-cost bid is one which we have considered on numerous occasions. In fact, an allegedly below-cost bid relates to the responsibility of the bidder, not the responsiveness of the bid. Thus, a below-cost bid is not nonresponsive. In order to award a contract, the contracting officer must make an affirmative determination of the bidder's responsibility, and consideration of the bidder's ability to perform satisfactorily at its offered price is part of this determination. Accordingly, our Office will not review an allegation of acceptance of a below-cost bid except in unusual circumstances which are not present in this case. J.D. Bertolini Industries, Ltd., B-219791, Aug. 19, 1985, 85-2 C.P.D. ¶ 193. Even if this protest had been timely filed, it raises an issue which would not have been for consideration.

Also, we note that Erlandson is not an interested party since it would not be in line for award if the protest were sustained. Gracon Corporation, B-219663, Oct. 22, 1985, 85-2 C.P.D. ¶ 437; 4 C.F.R. § 21.0(a). Moreover, the question of FRE's performance under the contract is a matter of contract compliance and administration, which is the responsibility of the contracting agency, not our Office. 4 C.F.R. § 21.3(f)(1); J.D. Bertolini Industries, Ltd., B-219791, supra.

The protest is dismissed.

  
Robert M. Strong  
Deputy Associate  
General Counsel